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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/594,724	09/29/2006	Masahiro Tsushima	107156-00350	9400
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ARENT FOX LLP 1050 CONNECTICUT AVENUE, N.W. SUITE 400 WASHINGTON, DC 20036				
EXAMINER				
GUARINO, RAHEL				
ART UNIT		PAPER NUMBER		
2611				
NOTIFICATION DATE		DELIVERY MODE		
06/19/2009		ELECTRONIC		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

DCIPDocket@arentfox.com
IPMatters@arentfox.com
Patent_Mail@arentfox.com

Office Action Summary

Application No.

10/594,724

Applicant(s)

TSUSHIMA, MASAHIRO

Examiner

Rahel Guarino

Art Unit

2611

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 29 September 2006.
2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-16 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.
5) ☐ Claim(s) _____ is/are allowed.
6) ☒ Claim(s) 1-16 is/are rejected.
7) ☐ Claim(s) _____ is/are objected to.
8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
10) ☒ The drawing(s) filed on 29 September 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO/SB-08)
Paper No(s)/Mail Date _____
4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. Claims 10-16 are rejected under 35 U.S.C. 102(e) as being anticipated by Yoneda US 6,609,251

Re claim 10, Yoneda discloses a digital receiving apparatus comprising (fig.1 (210)):
an information separating unit (2) for reproducing a stream of demodulation signal, and separating it into stream signals on multiplexed respective channels for output (col. 5 lines 47-56); a decoding unit (4) for decoding and outputting said stream signals (col. 5 lines 63-67); a control unit for switching and controlling a stream signal for the decoding unit to decode out of the stream signals on said respective channels (col. 6 lines 11-19); storing unit (5) for storing matching information for indicating matching relationship

between physical information for indicating reception quality and the data types of the stream signals on the respective channels (col. 22 lines 45-53), wherein said control unit determines the matching relationship between said physical information during reception and the data type of the stream signal on a channel selected out of said channels based on said matching information (col. 22 lines 54-65), and switches to the stream signal on another channel and makes said decoding unit decode it when the control unit determines that said physical information during reception and the data type of the stream signal on said selected channel do not conform to a predetermined relationship (col. 26 lines 9-19).

Re claim 11, the digital receiving apparatus according to claim 10, wherein the stream signal on said another channel is a stream signal of a data type different from the data type of the stream signal on said selected channel (fig.2c; col. 29 and 23-45 and col. 32 lines 14-21).

Re claim 12, the digital receiving apparatus according to claim 10, wherein the stream signal on said another channel has a data type conforming to a predetermined relationship with said physical information during reception (fig.60; col. 4 lines 27-35).

Re claim 13, the digital receiving apparatus according to claim 10 wherein said physical information is a bit error rate (col. 1 lines 26-34). (Furthermore, it is inherent and well known in the art to measure the received signal quality in BER).

Re claim 14, the digital receiving apparatus according to claim 10, wherein if said control unit determines that said physical information during reception and the data type of the stream signal of said selected channel do not conform to a predetermined

relationship fig.3 (b); col. 26 lines 9-19), the control unit searches for a stream signal on said another channel, having a data type conforming to the predetermined relationship with said physical information during reception, based on said matching information, and switches to the stream signal on said different channel based on the search result (col. 22 lines 39-47).

Re claim 16, Yoneda discloses computer program to be executed by a computer arranged in a digital receiving apparatus (fig.1 (210)), the computer program comprising (col. 3 lines 64 to col. 4 line 3):

an information separating step (2) of reproducing a stream of demodulation signal, and separating it into stream signals on multiplexed respective channels for output (col. 5 lines 47-56); a decoding step (4) of decoding and outputting said stream signals (col. 5 lines 63-67); a control step of switching and controlling a stream signal for the decoding unit to decode out of the stream signals on said respective channels (col. 6 lines 11-19); storing step of (5) storing matching information for indicating matching relationship between physical information for indicating reception quality and the data types of the stream signals on the respective channels (col. 22 lines 45-53), wherein said control step of, the matching relationship between said physical information during reception and the data type of the stream signal on a channel selected out of said channels based on said matching information (col. 22 lines 54-65), and the stream signal to be decoded in said decoding step is switched to the stream signal on another channel when it is determined that said physical information during reception and the data type of the stream signal on said selected channel do not conform to a predetermined relationship

(col. 26 lines 9-19).

Re claim 17, a recording medium containing the computer program according to claim 16 (fig. 62; Furthermore, it is inherent and well known in the art to have recording medium containing the computer program.)

“In re claim 15 Yoneda discloses a method of reception in a digital receiving apparatus because under the principles of inherency, if a prior art device, in its normal and usual operation, would necessarily perform the method claims, then the method claimed will be considered to be anticipated by the prior art device. When the prior art device is the same as a device described in the specification for carrying out the claimed method, it can be assumed the device will inherently perform the claimed process. In re King, 801 F.2d 1324,231 MPEP 2112.02”

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Rahel Guarino whose telephone number is (571)270-1198. The examiner can normally be reached on M-F (7:30-4:00).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Payne David can be reached on 571-272-3024. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Rahel Guarino/
Examiner, Art Unit 2611

/Chieh M Fan/
Supervisory Patent Examiner, Art Unit 2611